APPENDIX D

The following bill was introduced on August 6, 1971 as S. 2472, 92nd Congress, 1st Session, by the Honorable Philip A. Hart, United States Senator from the State of Michigan (the text of the bill is copied from 117 Cong. Rec. S 13501 [Daily ed. Aug. 6, 1971]):

S. 2472

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fairness in Franchising Act"

Sec. 2. As used in this Act—

(a) The term "person" means a sole proprietor, partnership, corporation, or any other form of business organization.

(b) The term "franchise" shall mean a contract or agreement, either expressed or implied, whether oral or written, between two or more persons, excluding credit or financing arrangements, relationships between manufacturers, agreements of a bona fide and express interm or trial nature requiring a relatively small new investment by the franchisee (as hereinafter described), and warranty, cooperative advertising, training, and other programs provided by one person to another person which other person receives his franchise from a third party—

(1) wherein a commercial relationship of definite duration or continuing indefinite duration is involved;

(2) wherein one person, hereinafter called the "franchisee", is granted the right to offer, sell, and distribute goods or services to the extent that they are manufactured, processed, distributed, or (in the case

of services) organized and directed by the other person, hereinafter called the "franchisor";

(3) wherein the franchisee as an independent business constitutes a component of franchisor's distribution system;

(4) wherein the operation of franchisee's business franchise is substantially associated with a franchisor's trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor; and

(5) wherein the operation of franchisee's business is substantially reliant on franchisor for the continued supply of goods or services.

(c) The term "goods" means any article or thing without limitation, or any part of such article or thing, including any article or thing used or consumed by a franchisee in rendering a service established, organized, directed, or approved by a franchisor.

(d) The term "commerce", as used herein, means trade or commerce among the several States or from foreign nations and any State or territory of the United States or the District of Columbia, or between the District of Columbia or any territory of the United States and any State or territory, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or territory of the United States or any insular possession or other place under the jurisdiction of the United States.

Sec. 3. It shall be a violation of this Act for any franchiser engaged in commerce, directly or through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise for any reason whatsoever without having first given written notice of such termination, cancellation, or intent not to renew to the franchisee at least ninety days in advance of such termination, cancelation, or failure to renew.

Sec. 4. Notwithstanding the terms, provisions, or conditions of any franchise, and except as provided in section 5, it shall be a violation of this Act, unless done for good cause and for legitimate business reasons, for any franchiser engaged in commerce, directly or through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise or threaten to terminate, cancel, or fail to renew a franchise. Any franchiser, engaged in commerce, who does terminate, cancel, fail to renew or who threatens to terminate, cancel, or fail to renew a franchise shall have the burden of proving that the termination, cancelation, failure to renew or threat of termination, cancellation, or failure to renew a franchise was done for good cause and for legitimate business reasons. For the purposes of this Act, good cause shall include:

(a) Failure by the franchisee to substantially comply with those requirements imposed upon him by the franchise which requirements are both essential and reasonable; or,

(b) Use of bad faith by the franchisee in carrying out the terms of the franchise.

For the purposes of this Act, legitimate business reasons shall include those Acts defined as good cause but shall not include:

(a) Any conduct which violates the antitrust laws, including section 5 of the Federal Trade Commission Act; or,

(b) Cancellation, termination, or failure to renew for the purpose of enabling the franchisor to take over the franchisee's business, unless reasonable compensation is paid for the value of the franchisee's business including goodwill.

Sec. 5. The provisions of section 4 of this Act shall not apply to any written franchise containing provisions for the binding arbitration of disputes concerning the items covered in section 4 in accordance

with the rules of the American Arbitration Association or other similar rules: *Provided,* That the criteria for determining whether good cause and legitimate business reasons existed for the termination, cancellation, or refusal to renew the written franchise shall be no less than that outlined in section 4 of this Act: *And provided further,* That the allowable compensation to a franchisee terminated for other than good cause shall be no less than that provided in section 7.

Sec. 6. It shall be a violation of this Act for any franchisor engaged in commerce, directly or through any officer, agent, or employee to engage directly or indirectly in methods of competition with any franchisee that constitute unfair methods of competition within the meaning of the Federal Trade Commission Act.

Sec. 7. Any franchise may bring an action against a franchisor for violation of this Act in any district court of the United States in the district in which the franchisor resides or is found, or has an agent, or in which the cause of action arises, without respect to the amount in controversy, and shall recover the damages by him sustained by reason of the franchisor's failure to comply with this Act, together with the costs of the action, including reasonable attorney fees.

Sec. 8. Any action brought pursuant to this Act shall be forever barred unless commenced within two years after the cause of action shall have accrued.

Sec. 9. No provision of this Act shall repeal, modify, or supersede, directly or indirectly, any provision of the antitrust laws of the United States. This Act is and shall be deemed supplementary to, but not a part of, the antitrust laws of the United States.

Sec. 10. This Act shall become effective six months after the date of its enactment.

Sec. 11. This Act shall not invalidate any provision of the laws of any State except insofar as there is

a direct conflict between an express provision of this Act and an express provision of State law which cannot be reconciled.

Sec. 12. If any provision of this Act or the application of such provision to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall be affected thereby.